No 157 5-149
Submitted

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 92.

JOHN KNOTE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED AUGUST 4, 1875.

Nov 17 1875
Rec'd
Jas Funk

SUPREME COURT OF THE UNITED STATES.

No. 92.

JOHN KNOTE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.

JOHN KNOTE
vs.
THE UNITED STATES. } No. 9264. Filed May 11, 1874. J. R.

To the honorable the judges of the Court of Claims:

The petition of John Knote respectfully showeth—

First. That your petitioner is a citizen of the United States, living and residing at Wheeling, in the county of Ohio, State of West Virginia.

Second. That your petitioner was the lawful owner of certain property, to wit, capital stock of Wheeling and Belmont Bridge Co., $5,000; capital stock of the People's Bank of Wheeling, $1,000; household furniture, $500; merchandise, notes, store-accounts, and cash, supposed to aggregate the sum of $11,000; and that the same was seized and libeled by the authorities of the United States, on the ground of the alleged treason and rebellion of your petitioner.

Third. That the estate and interest in said property of your petitioner, by a decree of the United States district court for the district of the State of West Virginia, was condemned and forfeited to the United States, and was sold under the order of said court.

Fourth. That the net proceeds of said sale, amounting to the sum of eleven thousand dollars, were paid and received into the Treasury of the United States, on account of the sale of said property of your petitioner, seized, condemned, and confiscated under the act of Congress of July 17th, 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," and under said act sold as aforesaid.

Fifth. Your petitioner further shows that, by virtue of the proclamation of the President of the United States of December 25th, 1868, known as the general amnesty proclamation, he was pardoned and relieved of all disabilities and penalties attaching to the offense of treason and rebellion, for which said property was confiscated; and

2 that your petitioner, by virtue thereof, has been restored to all of his rights, privileges, or immunities under the Constitution of the United States and the laws made in pursuance thereof, and has a right to and is entitled to receive from the United States the said proceeds of sale.

Sixth. That, nevertheless, the United States, disregarding your petitioner's rights in the premises, has neglected and refused, and still neglects and refuses, to pay over to your petitioner the proceeds of sale of said property.

Prayer.

Your petitioner therefore prays that your honorable court will render judgment in favor of your petitioner against the United States for the sum of eleven thousand dollars, and prays for all such other relief as your petitioner may be entitled to.

LINDEN KENT,
TH. JESUP MILLER,
Attorneys for Claimant.

STATE OF WEST VIRGINIA,
City of Wheeling, County of Ohio:

Before me, James R. Rogers, United States commissioner, personally appeared John Knote, and being duly sworn, doth depose and say that

no transfer or assignment of this claim, or any part thereof, or any interest therein, has been made, except as in the foregoing petition stated; and the petitioner is justly entitled to the amount therein claimed, after deducting all just credits and offsets; and that he believes the facts as stated in the said petition are true.

(Signed) JOHN KNOTE.

Sworn before me this 11th day of March, 1874.

JAMES R. ROGERS,
United States Commissioner for the District of West Virginia.

P. O. address of claimant, Wheeling, W. Va.
P. O. address of attorneys, Washington, D. C.

3 In the Court of Claims of the United States.

JOHN KNOTE
vs.
THE UNITED STATES. } No. 9264.

And the said defendants, by their Attorney-General, say that the petition in this cause does not allege facts sufficient to constitute a cause of action.

JOHN GOFORTH,
Assistant Attorney-General.

Filed Jan'y 21, 1875.

J. R.

(Indorsed:) Demurrer. vs. The United States. No. .

4 In the Court of Claims.

JOHN KNOTE
vs
THE UNITED STATES. } No. 9264.

At a Court of Claims held at the Capitol, in the city of Washington, the fifth day of April, A. D. 1875, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the said claimant's petition be dismissed.

By the court:

A true copy of record.

5 United States Court of Claims.

JOHN KNOTE
vs.
THE UNITED STATES. } No. 9264.

To the hon. the judges of the Court of Claims of the United States:

I hereby pray an appeal to the Supreme Court of the United States in the above-entitled cause.

JOHN KNOTE,
By Counsel, LINDEN KENT.

Filed April 30, 1875.

J. R.

Ordered that the appeal be allowed as prayed for.
By the court:
MAY 3, 1875.

6 9264. Filed April 5, 1875.

United States Court of Claims.

JOHN KNOTE
vs.
THE UNITED STATES.

In this case the petition sets forth that the petitioner is a citizen of Wheeling, in the State of West Virginia; that certain specified personal property of his was seized and libeled on the ground of his alleged treason and rebellion, and by the decree of the United States district court for the district and State of West Virginia was condemned and forfeited to the United States under the act of July 17, 1862, and sold, and the net proceeds, amounting to $11,000, were paid into the Treasury; and he avers that by virtue of the President's proclamation of December 25, 1868, he was pardoned and released of all disabilities and penalties attaching to the offense of treason and rebellion for which said property was confiscated, and by virtue thereof has been restored to all his rights, privileges, or immunities under the Constitution of the United States and the laws made in pursuance thereof, and that he is entitled to receive from the United States the said proceeds of sale; and he prayed judgment for $11,000.

The defendants filed a general demurrer to the petition, and on that issue was joined and the case argued and submitted to the court.

The learned counsel for the petitioner in their argument referred us for the construction of the word "pardon" in the second section of the second article of the Constitution to the following sentences of Chief-Justice Marshall in delivering the opinion of the Supreme Court in the case of The United States vs. Wilson, (7 Peters, 150.) In that case the Chief-Justice said as follows:

"The Constitution gives to the President, in general terms, the power to grant reprieves and pardons for offenses against the United States.

"As this power had been exercised from time immemorial by the executive of that nation whose language is our language, and to whose judicial institutions ours bear so close resemblance, we adopt their principles respecting the operation and effect of a pardon, and look into their books for the rules prescribing the manner in which it is to be used by the person who would avail himself of it."

On this authority the word "pardon" in the Constitution is to be construed according to its signification in English law at the time the Constitution was adopted. And the question is, what was that signification?

By the theory of the English government the king was lord paramount, from whom all lands were held in such estates as he pleased to grant, on the condition of service to him.

Lord Coke says: "All the lands within the realm were originally derived from the king, and therefore the king is sovereign lord, or lord paramount, either mediate or immediate, of all and every parcel of land within the realm." (1 Ins.)

7 And the services on which the grants of estates by the king were conditioned always included homage and fealty, so that treason was a breach of the condition upon which the lands were held, by which the lands were forfeited to the king and thus returned to him by the necessary operation of a condition at the common law.

The effect was, that the treason annulled the tenant's estate, which fell from the lands and left the original title of the king as it was before the estate was granted, and free of the incumbrance which the grant of it created. And in this the king derived nothing of title from the tenant, but merely held the land by his own original title as lord paramount, and simply as crown lands. And of these, Blackstone says: "The demesne lands, *terræ dominicales regis*, being either the share reserved to the crown, at the original distribution of landed property, or such as has come to him by forfeitures or otherwise." (1 Com., 286.)

I have cited Blackstone's Commentaries, because that work was contemporaneous with our Constitution, and brought the law of England down to that day; and then, as now, was the authoritative text-book on its subject, familiar not only to the profession but to all men of the general education of the founders of our Constitution. M'r Burke, in his speech "on conciliation with America," delivered in March, 1775, referring to information derived from "an eminent book-seller," as to the great exportation of law-books to this country, says: "The colonists have now fallen into the way of printing them for themselves. I hear that they have sold nearly as many of Blackstone's Commentaries in America as in England." That book, therefore, thus belongs to the precise time to which our question relates, and is especially authoritative on its subject, and therefore I shall continue to cite it.

The title of the crown lands being thus in the king, could be divested from him only as other titles were divested, by the grant of the owner. And the king, like other owners, was free to grant them to whom he pleased, and, therefore, might grant them again to their former tenant, who had forfeited them, or to any other person, as he pleased. And so he might grant what estate in them he pleased; and that absolutely or conditionally, as he pleased; and in this there was no connection with or recourse to the power to pardon, for it was the necessary result of title and the rules of tenure in the English feudal law.

And it is observable that that system was not, like the civil law, a system of jurisprudence founded on the principles of natural equity, but a state policy, and conventional merely. Its purpose was the establishment of government on the tenure of land, which was then the only permanent means of men's support. For mere personalty was then of little comparative value; it consisted chiefly of food, clothing, and arms, and was perishable in its nature and consumed in its use. It was, therefore, in legal language, incapable of a limitation over. And as it thus could not further the purpose of the system, it was little regarded in its law, but held to be merely an incident to tenure, and following its results. Thus Sir Charles Yorke, in his "Considerations on the law of forfeiture by treason," says as follows: "Goods and personal things. They were taken to be the produce of the feud and belonging to it, and were forfeitable in whole or in part for offenses of inferior moment." (P. 69.)

Such, in brief, is the theory and the history of forfeitures of lands and goods in the early English law, and of that title to them in the king by which, and by which alone, he could grant them to whom he pleased and as he pleased. And the doctrine of the restoration of forfeitures had then, and has now, no other foundation.

Blackstone brings this ancient law down to the time of our Constitu-
8 tion, and distinguishes carefully between the ordinary and the extraordinary revenue of the crown. The latter, the extraordinary revenue, were grants of Parliament for the general expenses of the national government and could be disposed of only according to the act of Parliament. The ordinary revenue was, in the expressive phrase of

Blackstone, "the proper royal patrimony," and, as such, disposable by the royal grant. He thus defines it: "The revenue is either ordinary or extraordinary. The king's ordinary revenue is such as has either subsisted time out of mind in the crown, or else has been granted by Parliament by way of purchase or exchange for such of the king's hereditary revenues as were found inconvenient to the subject." (1 Com., 251.) And necessarily that which had been an exchange for any part of the hereditary revenue of the crown stood in its place, as part of the royal patrimony, and subject to its incidents.

And of this "ordinary revenue" of the crown, or "proper royal patrimony," which had subsisted time out of mind in the king, Blackstone states eighteen sources, such as the revenues of vacant sees, first fruits of spiritual preferments, rents of crown lands, mines of gold and silver, wrecks, waifs, treasure-trove, royal fish, deodands, and forfeitures, &c. And of these last, Blackstone says: "16th. The next branch of the ordinary revenue of the king consists in forfeitures of lands and goods for offenses." And after stating the general ground of forfeitures, he says: "Hence in every offense of an atrocious kind the laws of England have exacted a total confiscation of the movables or personal estate, and in many cases a perpetuual, in others only a temporary, loss of the offender's immovables or landed property; and have vested both of them in the king, who is the person supposed to be offended, being the one visible magistrate in whom the majesty of the public resides." (1 Com., 299.)

And as this "ordinary revenue" belongs to the king in exclusive title, he consequently, and he only, may dispose of it. And from the earliest times such ordinary revenue has been the means of royal grants, and constituted the royal franchises of English law. Blackstone says, (1 Com., 302:) "Deodands and forfeitures in general, as well as wrecks, treasure-trove, royal fish, mines, waifs, and estrays may be granted by the king to particular subjects as a royal franchise." (1 Com., 302.)

And it is a matter of familiar history that these grants of the sources of the ordinary revenue of the crown were so lavishly made by successive kings, who, for their purposes, squandered the patrimony of their successors, as to impoverish the crown and reduce it to dependence on Parliament. And to save what remained of the royal inheritance, in the first year of Queen Anne's reign an act was passed restricting royal grants of crown lands. But from this act forfeitures were expressly excepted, so that these remained, as at the common law, in the king's exclusive control.

This history of the ordinary revenue of the crown, "the proper royal patrimony," shows that the title to forfeitures of realty and personalty is vested in the king, exactly as is the title to the other specified sources of his ordinary revenue. And as a consequence of such title he may dispose of any or all of them as he pleases, and, therefore, his power of disposing of forfeitures is no more inherent in or pertaining to his power to pardon than is his power to dispose of waifs, or wrecks, or deodands, or royal fish.

And in the English law all the text-books from Coke to Blackstone and since refer the king's power to restore forfeitures to his title; and by that all the rules relating to the restoration of forfeitures are shaped.

Lord Coke, in defining pardons, says: "A pardon is a work of
9 mercy, whereby the king, either before attainder and sentence or conviction, or after, forgiveth any crime, offense, punishment, execution, right, title, or debt, or duty, either temporal or ecclesiastical. All that is forfeited to the king he may restore by his charter." And this directly refers his power to restore to his title, for it limits it to that." (3 Inst., 233, Pardon.)

And under the head of restitution Lord Coke says as follows: "And the reason wherefore the king may by his charter pardon the execution and restore to the party or his heirs the land forfeited by his attainder, and remaining in the crown, is for that no person hath thereby any prejudice." Here, again, the restoration of the forfeiture is referred to title merely, for what is his own the king can convey, because it affects only himself; and Lord Coke in express words confines the restoration to the property "remaining in the crown." (6 Restitution, 3 Inst., 240.)

And because the king's power to restore results only from his title, it has always been the law in England, as it is now, that where a statute vests the forfeiture or any part of it in the subject, the king can restore only his own, and cannot restore what the law has given to the informer. Hawkins's P. C., 548, says: "I take it to be a settled rule that the king cannot, by any dispensation, release, pardon, or grant whatever, bar any right, whether of entry or action, or any legal interest, benefit, or advantage whatsoever, before vested in the subject."

And by the common law, title can be divested only by some mode or form of conveyance or transfer, and where that is in writing it must contain words of donation manifesting the intent to convey and efficient for it. And hence the rule is, and always has been, that a pardon, to effect a restoration of a forfeiture, must contain words of restitution, and thus be expressly a grant of property as well as the pardon of a crime. And unless such express words of restitution are contained in the pardon it is not a grant of property, but a pardon of a crime merely.

And the only reason for the requirement of words of restitution is that the title and ownership of the property are in the king. For if they were not his, words of restitution would be of no avail. And the rule is referred to here only to show that such title and ownership were in the king, in the English law.

A leading case for the rule was cited by the learned counsel for the Government, from 1 Lev., 120. It is better reported by a better authority, 1 Saunders, 362. In that case Toombes, administrator, brought a scire facias against Etherington on a judgment for £2,000 2s. recovered against him by the intestate. The defendant pleaded that the intestate, after the rendition of the judgment, committed suicide, and was found felo de se, and his goods were forfeited to the king. The replication was the act of 12 Car. 2, c. 11, "of free pardon, indemnity, and oblivion," subsequent to the suicide, whereby the judgment of £2,000 2s. was discharged from any forfeiture. Judgment was rendered for the defendant. And the court said as follows: "When the inquisition was returned to the king's bench which found the felony of himself, then were the debt and damages vested in the king, and by the act he has not granted restitution of it to the plaintiff, administrator. And for want of restitution the plaintiff cannot have it, and it remains in the king."

And the note by Saunders shows that the king brought a scire facias on the judgment against Etherington, and he pleaded the same act of "free pardon, indemnity and oblivion" of 12 Ch. 2, c. 11, which contained words of release of all judgments, &c. And the court held that such words of release discharged the judgment itself, and released the debtor from it. And this shows that the restoration of property is not the legal incident of pardon, for by the same act of Parliament the pardon of the offense went to one man and the grant or release of property to another.

There is but one case in the English law where the restoration of property follows a pardon, and there it is not incident to it but only accompanies it; and that is in the case of excusable homicide, under

the statute of Gloucester, which was in affirmance of the common law, and prescribes the proceedings, where it is found by verdict that the homicide was in self-defense or by mere accident. In the earliest practice, on such a verdict the prisoner was remanded to jail to await the king's grace. Later the practice was to certify the verdict into chancery, and thereupon the chancellor, as a matter of course, and without submitting the case to the king, issued a writ for the pardon of the prisoner and the restoration of the property forfeited. And afterward, to save the cost and delay of these mere forms, the modern practice was adopted, in which the court on the verdict render a judgment of acquittal, which prevents the forfeiture. Of course the case was exceptional, for in it there was no guilt; and Blackstone, after speaking of the ancient practice, says as follows, (4 Com., 188:) "The delinquent has now, and has had as early as our records will reach, a pardon and restitution of his goods as a matter of course and right."

And Hawkins (P. C., 530) says of the practice in his time and before, as follows: "However, it seems to have been always agreed that the forfeiture of goods, by such homicide, may be saved by a pardon, (which in this particular case seems to purge the guilt ab initio.") This is a clear implication that in his day in other cases pardon did not purge the guilt ab initio, but only exempted from the punishment. And it shows also how much less effect was then given to a pardon in authoritative text-books on the criminal law than is now often claimed for it in modern American decisions, and how gradually it has reached the utmost effect now given it in English text-books, of removing disabilities and prosecution from and after the pardon. M'r Russell, in his text-book on criminal law, vol. 1, (p. 975,) says as follows: "It was formerly doubted whether a pardon could do more than take away the punishment, but it is now settled that a pardon, whether by the king or act of Parliament, removes not only the punishment but all the legal disabilities consequent on the crime." And it is thus that a pardon restores a man's competency as a witness, (leaving his conviction to go to his credibility,) or his right to be guardian to his children, &c. And this removal of disabilities seems the proper and the utmost proper effect of a pardon, which, operating from its date, should preclude any further effect of the offense pardoned. But this is a different thing from giving the pardon a retroactive effect, and making it of itself divest property vested in the king, and of which by the general rules of law he could be divested only, as of any other part of his royal patrimony, by his own grant.

And the text-books in treating of pardon divide their subjects into heads and make the last "the effect of a pardon." And in thus speaking directly on the effect of a pardon, not one of them refers to or indicates the restoration of forfeited property as incident to a pardon and the legal consequence of it, or attributes to a pardon any further effect than the removal of disabilities and prosecutions. Of these books the highest authority for our special purpose is Blackstone, who says as follows: "Lastly, the effect of such pardon by the king is to make the offender a new man, to acquit him of all corporal penalties and forfeitures annexed to that offense for which he obtains his pardon, and not so much to restore his former, as to give him new credit and ca-
11 pacity," (4, p. 401.) And all this refers to the future operation of the pardon, and especially so, the words connected with forfeitures, which are "to acquit him of all corporal penalties and forfeitures." Now, to acquit is to discharge, and a man cannot be acquitted of a corporal punishment, a branding or whipping, he has already suffered; and forfeitures stand in the same sentence.

And the omission of the English text-books to refer to the restoration of forfeitures as an effect of pardon would seem to follow logically from the fact that in the English government the power to restore forfeitures and the power to pardon have no connection with and no relation to each other.

We have seen that forfeitures were a part of "the ordinary revenue" of the crown, of "the proper royal patrimony," of any part of which the king might dispose, because the title was in him, exactly as any other man may dispose of any part of his inheritance. But the king's power to pardon crime was one of his direct prerogative powers, (1 Blk., 269,) vested in him as the executive of the nation and which he held as a means of government, and of which he could no more dispose than he could of his forts, fleets, and armies, the command of which was another of his direct prerogative powers. So that the king's power to pardon and his power to restore forfeitures were of different origin and different natures, and had no other connection than being vested in the same person; while in our Government they are not, but are carefully separated and vested in different branches of the Government. For under our Constitution forfeitures belong to the United States; they are prosecuted in their name and expressly confiscated to them by the judgment rendered, and like other public property can be disposed of only by Congress, in whom the Constitution has placed the power "to dispose" of property belonging to the United States; while to the President the Constitution has given the power to pardon crime, and no other or greater power than is incident to and inherent in that power in the common law of England.

And it is to be remembered always that this distinctness of powers makes the scheme of our Government, and is essential to it, for to each branch of the Government its power is carefully meted out. And when the Constitution gives to Congress the power to dispose of the public property, and provides that no money shall be drawn from the public treasury except by an appropriation made by law, it positively excludes the President from any control of the national property, real or personal. And so it has always been held, and the forfeiture in this case was by the judgment that confiscated it to the United States as absolutely national property then as this Capital is now.

And as at the time of the adoption of our Constitution the king's power to restore forfeitures was merely the legal consequence of his title in them, and was not derived from and made no part of his direct prerogative power to pardon crimes, we think that the second section of the second article of the Constitution, in vesting in the President the power to pardon crimes, did not authorize him to restore forfeitures or to dispose of that part of the national property.

By the act of July 17, 1862, Congress authorized the President to grant to those who had participated in the rebellion "pardon and amnesty," and both of these words are used in the proclamation of December 25, 1868. As the legislature can neither extend nor restrict the power of the Executive to pardon crimes, the only question arising here is whether the word "amnesty," in the act of Congress, authorized the President to restore forfeitures.

What may be the technical meaning or effect of the word "amnesty" in other countries under different forms of government and different systems of law is foreign to our subject. But the word "amnesty" does not belong to the common law and has no technical meaning in it, and can be used in it only in the meaning of its synonym in our language, and that is oblivion. For the derivative and

literal meaning of amnesty is removed from memory; and in the English law oblivion is the synonym of pardon, and is so used in it. For the act of 12 Ch. 2, c. 11, is entitled "An act of free pardon, indemnity, and oblivion," (Stat. at Large, 3 vol., p. 166,) and these are also its special words of grant; and the case under that act of Tombes, adm'r, *vs.* Etherington, heretofore cited from 1 Saund., 362, therefore decides expressly that a grant of "free pardon, indemnity, and oblivion," by an act of Parliament, does not effect or include the restoration of forfeitures, and we know of no decision or authority in English law that decides a grant of amnesty is or can be anything more than a grant of oblivion.

The word "amnesty" properly belongs to international law, and is applied to treaties of peace following a state of war, and signifies there the burial in oblivion of the particular cause of the strife, so that that shall not be again a cause for war between the parties; and this signification of "amnesty" is fully and poetically expressed in the Indian custom of burying the hatchet. And so amnesty is applied to rebellions which by their magnitude are brought within the rules of international law, and in which multitudes of men are the subjects of the clemency of the government. But in these cases, and in all cases, it means only oblivion, and never expresses or implies a grant.

It is observable that the Executive proclamations of pardon previous to that of December 25, 1868, proffered in terms a restoration of property, while the proclamation of December 25, 1868, relied upon in this case, used the words "restoration of rights, privileges, and immunities," and it might be that these words would be satisfied by a mere removal of disabilities. But we have not sought to found an argument on this difference of phraseology.

On the whole case we are of opinion that the proclamation of December 25, 1868, does not entitle the petitioner to a restoration of the confiscated property claimed in his petition. And the order of the court is that the petition be dismissed.

Chief-Justice Drake did not sit on the trial of this case, or take part in its decision.

13 In the Court of Claims.

JOHN KNOTE
vs.
THE UNITED STATES. } No. 9264.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon, of the application of the claimant's counsel for the allowance of an appeal, as filed in the clerk's office, April 30, 1875, and of the order of the court of May 3, 1875, allowing the same of the opinion of the court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this fourth day of August, A. D. 1875.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 92. John Knote, appellant, vs. The United States. Court of Claims. Filed 4th August, 1875.

REC. 92—2

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1877.

JOHN KNOTE, APPELLANT,
vs.
THE UNITED STATES, APPELLEE.
No. 92.

FROM THE DECREE OF THE COURT OF CLAIMS OF THE UNITED STATES.

Brief of Appellant's Counsel

TH. JESUP MILLER,
LINDEN KENT.

Turner & Co., Law and Trade Printers, Webster Law Building.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1877.

JOHN KNOTE, APPELLANT,
vs.
THE UNITED STATES, APPELLEE. } No. 92.

FROM THE DECREE OF THE COURT OF CLAIMS OF THE UNITED STATES.

BRIEF OF APPELLANT'S COUNSEL.

The petition of the claimant, in this cause, states that he was the owner of certain personal property in the State of West Virginia; that by a decree of the United States District Court, for the district of West Virginia, that property forfeited to the United States by the order of said court was condemned and sold, and the proceeds paid into the Treasury of the United States by virtue of the act of July 17, 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes. That on 25th December, 1868, by virtue of the President's General Amnesty Proclamation, the claimant was pardoned and relieved of all disabilities and penalties attaching to the offense of treason and rebellion, and was restored to all his rights, privileges and immunities, under the Constitution of the United States and the laws made in pursuance thereof; and that therefore he is entitled to receive the net proceeds of said sales paid into the Treasury of the United States, and prays judgment for said proceeds of sale amounting to the sum of $11,000.

The defendants filed a general demurrer.

At the hearing the court below, the COURT OF CLAIMS, arguing that loyalty was a condition of all grants from the crown; so that treason was a breach of the condition of the tenure of all feudal estates, and annulled the tenant's estate which fell from the lands and left the original title as before the grant; held that the king, therefore, held the forfeited land by his own original title as lord paramount, and held nothing of title from the tenant; that the king's power to restore forfeitures was merely the legal consequence of his title in them and had no connection with, and made no part of his *prerogative* power to pardon crimes; but under our form of government forfeitures belong to the United States and, like other public property, can be disposed of only by Congress. The court therefore concluded that the 2d section of the 2d article of the Constitution did not authorize the President to restore forfeitures; and decreed that the claimant's petition be dismissed.

From this decree the claimant appealed to this court, and the cause is now for hearing on this appeal.

The appellant (who is the claimant) contends that the whole pardoning power of the government is reposed in the President; that the power includes the power of remitting forfeitures and that the terms of the General Amnesty Proclamation of December 25, 1868, are effective to remit and restore to him all the forfeitures and penalties that accrued to the United States by reason of his crime of treason against the United States and adhering to their enemies during the late civil war.

The pardon here relied upon is in the following words:

"Whereas, the President of the United States has heretofore set forth several proclamations offering amnesty and pardon to persons who had been or were concerned in the late rebellion against the lawful authority of the government, which proclamations were severally issued on the eighth day of December, 1863, on the twenty-sixth day of March, 1864, on the twenty-ninth day of March, 1865, on the seventh day of September, 1867, and on the fourth day of July, in the present year.

"And, whereas, the authority of the Federal Government

having been re-established in all the States and Territories within the jurisdiction of the United States, it is believed that such prudential reservations and exceptions, as at the dates of said several proclamations were deemed necessary and proper may now be wisely and justly relinquished, and that a universal amnesty and pardon for participation in said rebellion extended to all who have borne any part therein, will tend to secure permanent peace, order and prosperity throughout the land, and to renew and fully secure confidence and fraternal feeling among the whole people, and their respect for and attachment to the National Government designed by its patriotic founders for the general good.

"Now, therefore, be it known that I, Andrew Johnson, President of the United States, by virtue of the power and authority in me vested by the Constitution, and in the name of the sovereign people of the United States, do hereby proclaim and declare unconditionally, and without reservation, to all and to every person, who directly ot indirectly participated in the late insurrection or rebellion, a full pardon and amnesty for the offense of treason against the United States, or of adhering to their enemies during the late civil war, with restoration of all rights, privileges and immunities under the Constitution and the laws which have been made in pursuance thereof.

In testimony," &c., 15 Stat. at Large, pp. 711–12.

I.

The Constitution provides that the President "shall have power to grant reprieves and pardons for offences against the United States excepting cases of impeachment" (Art. 11, § 2) "The power thus conferred is unlimited, with the exception stated. It extends to every offense known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken, or during there pendency, or after conviction and judgment. This power of the President is not subject to legislative control. Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders. The benign prerogative of mercy reposed in him cannot be fettered by any legislative restriction" (Ex parte Garland, 4 Wall. 480. See also Ex parte Wells 18 How., 307).

The whole pardoning power of the Government, then is placed in the President.

II.

The language of the pardon here relied on is general, and its meaning and intent are so clear as to be beyond a cavil. In express terms it gives FULL pardon and amnesty without reservation and with restoration of all RIGHTS, PRIVILEGES, and IMMUNITIES. Can language more apt be desired to restore all *rights* of property, personal *privileges* and *immunity* from penalties? But if the words are ambiguous their sense is to be ascertained by the ordinary rules of construction; and a pardon is to be construed most beneficially for the subject, (4 Bl. Com., 401. Wywill's case, 5 Coke, 49). Is not this meaning warranted by the context, Is it not necessary to the spirit of the proclamation? The proclamation of December 8, 1863, offers pardon "with restoration of all their rights of property, except as to slaves, and in property cases where the rights of third parties shall have intervened" (13 St. at L., 737); that of 29 May, 1865, grants pardon with restoration of all rights of property except as to slaves and "except in cases where legal proceedings under the laws of the United States for the confiscation of property of persons engaged in rebellion have been instituted" (13 St. at. L. 758); that of ~~September 7~~ July 4, 1868, grants pardon "with restoration of all privileges, immunities and rights of property except as to property with regard to slaves, and except ~~in cases of legal proceedings~~ as to any property of which any person may have been lawfully divested under the laws of the United States" (15 St. at L. 700).

These proclamations are before the President in granting the pardon here pleaded, they are directly referred to in it; only a few individuals were excepted from the benefit of these prior pardons; to all the rest before the 25 December, 1868, every right, every privilege and every immunity had been already restored, except the right to the property which by reason of the crime had already inured to the United States, and the property in slaves; then this pardon is issued with the purpose and intent, made apparent in the preamble, of relinquishing the reservations and the exceptions of these pardons; in other words, of reinstating all the late rebels without exception in every right, privilege and immunity so far as the power of the executive could, without any reservation of the proper-

ty forfeited. The vague suggestion of the court below that "the words, 'restoration of rights, privileges and immunities' might be satisfied by a mere removal of disabilities" is untenable unless we are to hold that rights of property are not rights; unless we are to dissipate the plain meaning of the words, to disregard the context, and to overlook the spirit of the proclamation; and to violate every rule for its construction. This Court has already indicated the true meaning of the language of this pardon U, S. vs. Klein, 13 Wall., 141.

This proclamation then must be considered as an exhaustive exercise of the whole power of the President of the United States to pardon the claimant, and to restore his property, forfeited for the crime of treason.

III.

We come now to the consideration of the effect and extent of a full pardon under our form of government:

"As this power has been exercised from time immemorial by the executive of that nation whose language is our language, to whose judicial institutions ours bear a close resemblance, we adopt their principles respecting the operation and effect of a pardon, and look into their books for the rules prescribing the manner in which it is to be used by the person who would avail himself of it." United States vs. Wilson, 7 Pet., 160 bid., Ex parte Wells 18 How., 307, Exparte Flavel 8 W. & S. 197. Cathcart vs. Robinson 5 Pet. 264.

"A pardon is a work of mercy whereby the king, either before attainder or sentence, or conviction, or after, forgiveth a crime, offense, punishment, execution, right, title, or debt, or duty, either temporal or ecclesiastical. All that is forfeited to the king, he may restore by his charter," (3 Coke's Inst. 233). No distinction is made as to the nature of the punishment which the law inflicts for the offense whether it be corporal or pecuniary the pardon extends to all. Blackstone says (Vol. IV., p. 402) "the effect of a pardon by the king is to make the offender a new man to acquit him of all corporal penalties and

forfeitures annexed to that offense for which he is pardoned" "A pardon," says Russell on crimes, (Vol. III.,p. 621) "whether by the king or by the act of Parliament, removes not only the punishment but all the legal disabilities consequent on the same."

"The stroke being pardoned the effects of it are consequently pardoned,"(Bac. Abr. title Pardon; see also Cole's case Plow., 401, Brown vs. Brashaw 1 Bulst., 154).

In England the pardoning power vested in the king was limited; nothing could restore or purify the blood when once corrupted, by attainder, an inseperable incident of a conviction and judgment for treason or other felony, but the high and transcendant power of Parliament; (IV. Bl. Com., 402,) but a full pardon by Parliament would restore not only the blood, but the land, &c., of the party attaint, (vide 5 Bac. Abr., title Pardon); yet a king's pardon after attaint makes the offender a new man, and his children born after such pardon capable of inheriting from him, (Bl. Com. Supr.). The effect of a full and complete pardon, which after attainder required an act of Parliament to remove the judgment of attainder has been always held in England as well to restore all forfeitures as to relieve all disabilities, except only such forfeitures and penalties as had inured to the benefit of third parties. (See Toombs Adm'r vs. Ethrington, 1 Sand. 353 and 361, Ludlow vs. Lopez, Str. 529, Biggin's case 5 Coke 50, Bac. Abr., title Pardon, H., Russell on crimes, Vol. I., 175).

This proposition was substantially conceded by the court below; but was attempted to be explained by attributing the king's power to restore forfeitures to his personal ownership of the forfeited property; and his power of pardon to the prerogative of his office, tracing the title of the property as reverting to the person of the king as heir of the grantor because of treason, a breach of the condition of the grant by reason of the peculiarity of the feudal tenures; that, being therefore invested with the title in his personal character, when giving a pardon by virtue of his prerogative, the king could restore the

forfeited property to the offender by using appropriate words, just as he could, using the same words, grant the property to another.

This view of the court below is, we believe, without authority.

It might be objected to this explanation:

1. That forfeitures were had in England when all the lands were held by allodial tenures, and not subject to the peculiarities of the feudal system.
2. That of the feuds, some were divided into sub-feuds, and in case of breach of condition in such, only the estate of the offender "would fall from the land," and it would revert to his immediate feudal superior, and unless he was a tenant *in capite*, not to the king.
3. That such a reversion would wipe out all the charges that had come upon the land between the dates of the grant and the reversion.
4. That for several dynasties the occupants of the throne could take nothing by inheritance from the Plantagenet who granted the feuds.
5. That upon such a *restoration* the offender would not be reinstated in his former but endowed with new rights relieved of any charges upon his former estate.

Manifestly the court below erred and its error arose from a confounding *forfeiture* for crime with *escheat* for breach of the condition of fealty. The distinction between the two is recognized and declared by Blackstone (II. Com. 251 and IV. 384) Escheat is a fruit of the feudal tenures, and land escheated upon attainder (because upon attainder there was no heritable blood) to the immediate lord of the fief and not, except of land held *in capite*, to the king; but immediately the lands were forfeited to the king as a penalty of the crime. The lord of the fief took escheats by his original title and, therefore, free of any rights of third persons which had accrued, whether of dower, mortgage, or otherwise. Forfeiture to the crown on the other hand is by no means derived from the feudal policy, but was antecedent to the establishment of that system, and formed a part of the ancient Scandinavian

Constitution and was part of the punishment for crimes. The crown takes an estate by forfeiture subject to the engagements and encumbrances of the person forfeiting (Burgess vs. Wheat. 1 Eden 201; see also Brown vs. Waite, 2 Mod., 133.)

In England then, inherently incident to a full and complete pardon was a restoration of whatever forfeitures had not enured to the benefit of some third person.

In this country a pardon has the same effect and the same incidents as in England. In common parlance to pardon may be to excuse offenses against, or release obligations to some mere moral sentiment; but in its technical sense, because the law and governments deal not with thoughts and feelings, to pardon means to wipe out an offense and its consequences.

Fine and imprisonment are the usual penalties for crimes, and these are always remitted by the pardon. This court has already defined pardon to be "an act of grace proceeding from the power charged with the execution of the laws which exempts the offender from the punishment which the law inflicts for a crime he has committed," (U. S. vs. Wilson, 7 Pel., 160); and again, (*ex parte* Garland 4 Wall., 380) "a pardon reaches both the punishment prescribed for the offense and the guilt of the offender, and when the pardon is full it releases the punishment and blots out the existence of the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense." These correspond in the main with the definition of Lord Coke (q. v. s.); the idea of a remission of punishment is common to all. In Pennsylvania (Cope vs. Commonwealth, Penn. St. R., 297) the court say "we are satisfied, however, that although the remission of the fine imposed would not discharge the offender from all the consequences of his guilt, a full pardon would." In Massachusetts (Perkins vs. Stevens, 24 Pick., 280) it is said "It is only a full pardon which can wipe away the infamy of the conviction and restore the convict to his civil rights." Fines and forfeitures are common modes of punishment. The same considerations of justice, policy and humanity which would induce the release of other penalties may apply with equal force to these; and the power to pardon includes as in-

cidental to it the power to reach these. "The effect of a full pardon is to absolve the party from all the consequences of his crime and of his conviction therefor direct and collateral; it frees him from the punishment, whether of imprisonment, pecuniary penalty or whatever else the law has provided." (Bishop Cr. Law, sec 713.)

This view is confirmed by the familiar practice of the government and the opinions of its law officers and the judgments of its courts. (See Op. Att. Gen., 6. 458 ibid, 488; 8 id., 281; 2 id., 329; 3 id., 317; 4 id., 458.) Atty. Genl. Cushings says: (8 Op. Atty. Genl., 281,) "The President may grant an absolute pardon or a conditional one. He may pardon before conviction or trial, or after. *His power extends to all penalties and forfeitures* as well as to other punishments." Again, Atty. Gen. Bates writes: "The President has no power to remit forfeitures, except as an incident to the power of pardoning crimes and offenses against the United States. If a fine, forfeiture or penalty be prescribed by law as a punishment in whole or in part, the President's power can reach and relieve it; for he can pardon the offense itself, and when that falls, of course its legal consequences fall with it." (Op. Atty. Gen., X., 452.) The court said in *ex parte* Garland, (4 Wall., 381,) "The effect of this pardon is to relieve the petitioner from all penalties and disabilities attached to the offense of treason, committed by his participation in the Rebellion;" and in the case of Armstrong's Foundry, (6 Wall., 768) which arose under the act of 6 Aug., 1861, it was contended that as that act inflicted no punishment on the owner, and the offense for which the forfeiture had accrued, was in legal contemplation of the thing itself and not of its owner, the pardon of the offender did not restore it, but the court considered the offense as substantially that of the owner and say "his general pardon relieved him from the penalties he had incurred to the United States." Again, in Padelford's case (9 Wall., 542;) Klein vs. U. S.; Armstrong vs. U. S,; and Pargoud vs. U. S., (13 Wall., p. 141, 155 and 156,) and Carlisle vs. U. S., (16 Wall., 151), this court clearly recognize that it is within the scope of a pardon, and is incident to a full pardon to relieve against penalties in the nature of forfeitures which have accrued to the United States,

Constitution and was part of the punishment for crimes. The crown takes an estate by forfeiture subject to the engagements and encumbrances of the person forfeiting (Burgess vs. Wheat. 1 Eden 201; see also Brown vs. Waite, 2 Mod., 133.)

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ty forfeited. The vague suggestion of the court below that "the words, 'restoration of rights, privileges and immunities' might be satisfied by a mere removal of disabilities" is untenable unless we are to hold that rights of property are not rights; unless we are to dissipate the plain meaning of the words, to disregard the context, and to overlook the spirit of the proclamation; and to violate every rule for its construction. This Court has already indicated the true meaning of the language

This proclamation then must be considered as an exhaustive exercise of the whole power of the President of the United States to pardon the claimant, and to restore his property, forfeited for the crime of treason.

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We come now to the consideration of the effect and extent of a full pardon under our form of government:

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is any appropriation already made by Congress applicable to such office or such contract, the department may pay the same, but if there is no such appropriation Congress is under obligation to make it, and so if the President is authorized to grant a pardon and if in any case a pardon carries with it the obligation on the part of the government to restore a forfeiture deposited in the Treasury, it becomes the duty of Congress to make the necessay appropriation. Attorney General Cushing explained this, answering the Secretary of the Treasury; "I conclude therefore that in this case no question remains except whether by intendment of law, this money was actually in the Treasury Department. If it was, a law will be requisite to draw it out *in execution of the pardon*; if not it must be refunded by you for this purpose" (VIII Op. Att. Gen. p. 285.) This argument of the court would apply with equal force to every case brought, for appropriations by Congress are required to pay the judgments of the Court of Claims; indeed a large part of its jurisdiction arises because of the neglect or failure of Congress to make appropriations.

TH. JESUP MILLER,
LINDEN KENT.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1877.

No. 92.

JOHN KNOTE, APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

BRIEF OF APPELLANT'S COUNSEL, IN REPLY.

If the constitutional power contended for, of restoring forfeitures annexed to a crime for which the pardon is granted, is reposed in the President, as incidental to the power of pardon, we must look to the nature of the right and claim thus created to determine whether or not Congress has supplied a remedy for its enforcement. Was the claimant in this case in error when he resorted to the Court of Claims to assert his rights and demands?

In Brown's case, (McCahon's R., 231,) referred to in the brief, the claimant filed his petition in the Circuit Court, asserting his right to the property or proceeds thereof, under the special pardon. His property had been forfeited under the act of 17th July, 1862, for the offense of treason and participation in the rebellion. The decree of condemnation had been passed, the property sold, and the proceeds paid into the registry of the court. With respect to the property itself, the rights of the purchaser, a third party,

had intervened, and these rights could not be disturbed. (*Semmes* v. *U. S.*, 1 Otto.)

But no interests of third parties could be affected by any subsequent disposition of the proceeds of the property, in which the Government alone was interested. The proceeds of sale were absolutely the property of the Government, and as between the Government and the offender, they represented the property forfeited, affected with the same relations as the property itself; and, as the rights created under the pardon in the Osborne Case (1 Otto, 474) were enforced in favor of the grantee, against the property in the registry of the court, so, in Brown's case, they were enforced in like manner against the proceeds, after the transmutation of the title of the property, which had passed under the sale to the purchaser. The same principles are invoked in the decision of each case. Again, this court, in the Osborne case, say that the "forfeiture results not from the decree of the court, but from the offense which the decree establishes and declares." This being so, it follows that, when the decree of condemnation is rendered, the "offense is established," the forfeiture is exacted, the title of the offender to the property is divested, and the ownership of the United States Government is consummated. The act of July 17, 1862, which imposes the forfeiture, requires nothing further to *vest* the title in the United States; and the moment the title of the offender is *divested*, it *vests* in the Government.

The act provides that the property shall be condemned as enemies' property, and become the property of the United States, and may be disposed of as the court shall decree, and the proceeds thereof paid into the Treasury of the United States, for the purposes aforesaid.

It is true, that the property, or the proceeds, may still be under the control of the court until the final order of disposition, but the act fixes the duty of the court, in directing that the net proceeds shall be paid into the Treasury of the United States. This order of the court, in pursuance of the statute, can have no effect to perfect a title which was before

absolute. The fund is transferred *as* the property of the United States, and not that the payment into the Treasury in any sense *makes* it the property of the United States.

In the language of the opinion of the Court of Claims, we may say, that upon the rendition of the decree of condemnation establishing the forfeiture, the property forfeited "was *then* as absolutely national property as this capitol is now."

If the title to the proceeds, at this stage of the confiscation proceedings, was perfected in the United States, it could only be divested by an act of the Government, effective to restore or create, or recreate a legal right in the grantee of the pardon. The title to the proceeds having passed from him absolutely, every claim or demand thereto must have been based upon a subsequently acquired right or title. And furthermore, it must have been a *legal right*, or a right creating a *legal obligation*, or else the party asserting it could have no standing in a court. Whatever may be the moral force of an obligation, courts never enforce those claims or rights which rest upon the mere grace or favor of the Government. It is true, that the pardon itself may be an act of grace or mercy, subject, in its exercise, to the discretion of the President; but when the power is exercised by the President within the constitutional limitation, co-extensive with the exercise, its effects and consequences clothes the grantee of the pardon with *legal* rights that the courts must and do recognize as such, whether they be personal rights, affecting his civil status, rights of property, or immunity from penalties; and there is no power in the legislative branch of the Government to limit or control the effect of a pardon, whatever it may be. If it were otherwise, either the legislative or judicial branches of the Government could defeat the constitutional prerogative of the President, the first by enacting laws which limit the effect of the pardon, as was attempted by Congress in the act of July 12, 1870, (16 Stats. at Large, 235,) and which, for that reason, was decided to be unconstitutional by this court, in *Klein's Case*, (13 Wall., 129.) The

second, by refusing to recognize as legal rights, with corresponding obligations, those benefits which were granted by the President as incidental to the pardon, and in this manner to withhold from the grantee the fruits thereof. But the courts have never done this, but have invariably recognized such rights, and given full effect to them. In *Klein's Case*, (13 Wall., 141,) the restoration of the rights of citizenship by the pardon were adjudicated.

In *Osborne's Case*, (1 Otto, 474,) and *Brown's Case*, (1 McCahan, 231,) the right of the grantee in the pardon to the forfeiture, exacted as the punishment of the crime, was enforced, and the proceeds ordered to be paid to him.

Upon the authority of these cases, we conclude that the rights which arise to the grantee of a pardon by the President are such as are cognizable in the courts, and create such legal obligations on the part of the Government as will be enforced by them.

So far we have dealt only with the rights of the parties endeavoring in the light of the authorities to ascertain and fix their nature. We contend that the very act of the Government which created the right, created the corresponding obligation on the part of the Government to respond to it. The act which gives the person pardoned a claim or demand against the Government, makes the Government a debtor to the extent of such demand. The *remedies* for the enforcement of any claim against the Government depend exclusively upon such provisions as Congress may make. Whatever be his rights, the subject has no redress against the Government, except it be accorded to him by some law of Congress. In the cases cited, wherein the rights were recognized and enforced, the jurisdiction had attached by reason of the voluntary appearance of the Government in the confiscation proceedings. In the case at bar, the proceeds of the property forfeited had passed from the control of the United States District Court, and its jurisdiction ousted.

As between the claimant and the Government, however, we contend that they were in the same manner subject to

be affected by any intervening rights, such rights to be cognizable in a forum provided by law, with jurisdiction of actions to enforce legal rights in favor of a subject against the Government.

The act of 24*th February*, 1855, which confers upon the Court of Claims its general jurisdiction, clothes it with ample power to give redress in such cases. This seems to be virtually conceded by the court below, and also in the argument of the Solicitor General. The argument against the claimant's right to recover is not founded upon an inadequacy of *remedy*, but upon the absence of any *right*.

If this position be correct, there is no force in the argument that it is in violation of the Constitution, which limits the disposition of the property of the Government to Congress, for the Court of Claims has no power to enforce its judgments by execution, but the payment thereof is made out of such appropriations as Congress may make or direct. Notwithstanding the judgment of the Court in favor of the claimant, the claim may be defeated by Congress. The judgment does not reach any money in the Treasury; it is the appropriation by Congress in execution of the judgment which draws the money from the Treasury.

LINDEN KENT.
Of Counsel.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

JOHN KNOTE, APPELLANT,
vs.
THE UNITED STATES, APPELLEE. } No. 92.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

JOHN KNOTE, APPELLANT,
vs.
THE UNITED STATES, APPELLEE. } No. 92.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

The question presented by the above appeal is, whether one who has received a pardon from the President of the United States, with a special clause *restoring all rights, privileges, and immunities under the Constitution, and the laws which have been made in pursuance thereof*, can, by virtue of such clause, reclaim from the United States certain money in the Treasury, being the net proceeds of certain personal property which belonged to him and was sold by order of court under a decree of forfeiture by virtue of the act of 1862, c. 195, (12 Stats., 589.)

I submit:

I. That at common law, in England, a simple charter of pardon did not *restore* forfeited property which had

already vested in the government. *A special clause of restitution* in the charter was required for that purpose.

II. That the clause of restitution in the present case being limited to rights, &c., *under the Constitution*, does not include rights of property.

III. That (at all events, without special authorization thereunto by act of Congress) the President has no power, whether by a special clause in a charter of pardon or otherwise, to restore property that has vested in the United States in consequence of an *execution executed* under a competent decree of forfeiture.

I. The first of the above propositions is, as I understand, not controverted in this case. I, therefore, leave it with a quotation from *Chitty on Prerogative*, p. 102: "When the offender's property and civil rights have once vested in the King they cannot be restored to the offender, nor are they divested from His Majesty by a mere pardon, without a clause of restitution."

II. The words of the special clause in the pardon relied upon by the claimant are as follows: "*With restoration of all rights, privileges, and immunities under the Constitution and the laws which have been made in pursuance thereof.*"

Rights of property are not rights *under the Constitution of the United States*, except in very special cases, as for the purpose of protection against certain legislation or enforcement of law *by the States*. (Slaughter-house cases, 16 Wallace, 36, pp. 74, &c.; Cruikshank's case, 92 U. S., 542, pp. 554–5.)

III. It was not competent for the President to restore this money after it had so vested in the United States.

The reason why special clauses restoring forfeited property *that has vested* are found *in charters of pardon* by the King of England, seems to be that such property vests in him personally, and is frequently *freehold*, which, for its conveyance, requires a King's grant, (2 Blacks., 346; Chitty on Prerogative, p. 389,) the formalities of which are the same as those of a charter of pardon, (compare the passages cited above with others to be found in 4 Blacks., 400, and Chitty, 98.) Indeed, the latter, apparently, is only one sort of King's grant. One and the same instrument, therefore, might well extend to bestow the immunity and also the land. And although the King might well give forfeited personal property in possession *by parol*, and so a grant was unnecessary as to that, yet certainly for that it would be *sufficient*, and, under the circumstances, convenient.

In the United States, however, there is no such thing as a *President's grant*, except for the mere purposes of pardon, and for certain other cases provided for specifically by statute, (as, patents for public land, inventions, &c.)

It appears, therefore, not to be true that at common law there were charters of pardon which, *considered purely as such*, differed as to the matter before us, viz, some having a less and some a larger operation upon property vested in the Crown; but that such charters operated as to property *vested*, not as Charters of pardon, but merely as another sort of Crown grants.

It seems plain, therefore, that no charter of pardon can have such operation in the United States; for *the President* is not *vested* with the forfeited property which

has fallen into the possession of the United States, and no statute has been passed allowing him to act upon it by way of *power*.

The case seems to be satisfactorily treated in the learned opinion of the Court of Claims in this case, (Record, pp. 3, &c.,) and also in a learned opinion of the court of error of New Jersey, in Cook *vs.* The Board of Freeholders, &c., (3 Dutcher, 637.)

S. F. PHILLIPS,
Solicitor-General.

O